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FCC - MAILROOM

To:	Federal Communications Commission Office of the Secretary	From:	Dr. Noreen Michael, Commission Dept of Education, U.S. Virgin Islands
Fax:	202-418-0187	Pages:	3 (including cover sheet)
Phone:		Date:	6/16/2003
Re:	APPEAL - YEAR 5 FUNDING DENIAL; CC Docket Nos. 96-45 and 97-21		

• **Comments:**

The original of this appeal was sent by Federal Express on Friday, June 13, 2003. This copy is being filed to ensure that the 60-day appeal deadline is met in the event delivery of the original is delayed. Any questions concerning this appeal should be directed to the following:

Dr. Noreen Michael
Commissioner, Department of Education
Government of the United States Virgin Islands
Telephone: 340-774-0100
Fax: 340-779-7153

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List ABCDE

**Government of the United States Virgin Islands*****Department of Education*****Office of the Commissioner****#44-46 Kongens Gade****St. Thomas, U.S. Virgin Islands 00802****Tel: (340) 774-0100****Fax: (340) 779-7153**

June 12, 2003

Federal Communications Commission
445-12th Street, S.W.
Room TW-A35
Washington, D.C. 20554

RECEIVED & INSPECTED**JUN 16 2003****FCC - MAILROOM****RE: CC Docket Nos. 96-45 and 97-21; Application No. 331593****To Whom It May Concern:**

We respectfully request reconsideration of the denial of our appeal of the Year 5 funding decision for the above-referenced application. This request is limited to FRN 902186 for telecommunications services (Innovative f/k/a Virgin Islands Telephone Corp.)
Reference CC Docket Nos. 96-45 and 97-21.

Under the guidelines for the SLD review of appeals, the Universal Service Administrative Corporation can approve an appeal in the event that it is in the best interest of the public.

With respect to this request for reconsideration, please note the following:

- a) Our Year 5 funding request for services was originally denied in full. The Funding Commitment Decision Letter indicated that the denial was because "[a]pplicant has not provided sufficient documentation to determine the eligibility" of the requested services.
- b) An appeal of the funding denial was made on December 20, 2002. The basis for the appeal was due to the fact that we did not have any record that the PIA had requested additional information concerning our Year 5 application.
- c) On April 15, 2003, a decision on appeal was rendered, again denying our Year 5 application in full. The decision on appeal stated that funding was denied in full, because we failed to post the required Form 470 and wait the mandatory 28 days before signing contracts on January 16, 2002.

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- d) The Form 470 in question was submitted for processing and posting on December 20, 2001; the application and required certification were received by the SLD on December 22, 2001. However, the Form 470 was not posted until February 28, 2002, which resulted in An Allowable Contract Date of March 28, 2002.
- e) As of the day before applications were due, we had not still received notice of the Form 470 posting, and therefore, had no idea of the associated Allowable Contract Date. At that point, we decided to count 28 days from the date the Form was submitted for processing, execute our contracts and file our Form 471 on time. While we were aware that we could have waited until the posting and file our application late, we did not know why the Form 470 had not been posted or when it would be posted to start the 28 day period. Therefore, we decided to complete filing rather than miss the deadline waiting for our Form 470 to be processed.
- f) Notwithstanding the timing issues discussed above, we are requesting a waiver of the Form 470 posting requirement with respect to FRN 902186 (telecommunications), because there is only one available service provider in the U.S. Virgin Islands for basic telecommunications services. The purpose of Form 470 is to ensure a competitive process that results in applicants receiving the lower pre-discount price from vendors. *Federal Joint Board on Universal Service CC Docket No. 96-45, Order on Reconsideration 12 CC Rcd 10095, 10098, par. 9 (1997)*. In this instance, we must use Innovative (f/k/a/ Virgin Islands Tel. Corp.) for telecommunications services. Therefore, these services are not subject to competitive bidding.
- g) Where the intended purpose of a rule under the E-Rate program cannot be satisfied, we believe that a waiver of the rule is in the best interest of the public.

We appreciate your consideration of the foregoing in your review of the appeal denial. Please do not hesitate to contact me if you have any questions concerning this request or would like to discuss this matter further.

Best Regards,


Noreen Michael, PhD
Commissioner